Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

A matter regarding IMH 2190 BELLEVUE APARTMENTS LTD. and [tenant name suppressed to protect privacy]

DECISION

Application Code ARI-C

Introduction

IMH 2190 Bellevue Apartments Ltd. applied for an additional rent increase for capital expenditures, under section 43 of the Residential Tenancy Act (the Act) and 23.1 of the Residential Tenancy Regulation (the Regulation).

IMH 2190 Bellevue Apartments Ltd. represented by legal counsel AAG (the Landlord), the other landlord's agents and the Tenants mentioned on the cover page of this decision attended the hearing. All the parties had a full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

Service

The Landlord affirmed that he served the notices of dispute resolution proceeding and a letter with a link to the evidence (the materials) on November 16, 2024 by attaching individual packages to the rental unit's front doors of all the named respondents. The Landlord submitted a proof of service affidavit dated January 16, 2025 indicating service of the materials in accordance with the Landlord's testimony.

The attending Tenants confirmed receipt of the materials.

The Landlord confirmed receipt of the response evidence and that he had time to review it.

Based on convincing testimony of the parties and affidavit, I find the Landlord served the materials in accordance with section 89(1) of the Act and that the Tenants served the response evidence in accordance with section 88 of the Act. Thus, I accept service of the materials and the evidence.

Application for Additional Rent Increase

The Landlord is seeking an additional rent increase for 3 expenditures totalling $233,713.00:

1. Emergency energy generator ('Generator' - $31,631.25)
2. Heating and Hot Water System ('Heating' - $181,384.60)
3. Building Automation System Upgrade ('Automation' - $20,697.15)

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Regulation 23.1 sets out the framework for determining if a landlord is entitled to impose an additional rent increase for expenditures.

Regulation 23.1(1) and (3) require the landlord to submit a single application for an additional rent increase for eligible expenditures "incurred in the 18-month period preceding the date on which the landlord makes the application".

Per Regulation 23.1(2), if the landlord "made a previous application for an additional rent increase under subsection (1) and the application was granted, whether in whole or in part, the landlord must not make a subsequent application in respect of the same rental unit for an additional rent increase for eligible capital expenditures until at least 18 months after the month in which the last application was made."

Regulation 23.1(4) states the director must grant an application under this section for that portion of the capital expenditures in respect of which the landlord establishes all the following:

> (a) the capital expenditures were incurred for one of the following:
> (i)the installation, repair or replacement of a major system or major component in order to maintain the residential property, of which the major system is a part or the major component is a component, in a state of repair that complies with the health, safety and housing standards required by law in accordance with section 32 (1) (a) [landlord and tenant obligations to repair and maintain] of the Act;
> (ii)the installation, repair or replacement of a major system or major component that has failed or is malfunctioning or inoperative or that is close to the end of its useful life;
> (iii)the installation, repair or replacement of a major system or major component that achieves one or more of the following:
> (A) a reduction in energy use or greenhouse gas emissions;

(B) an improvement in the security of the residential property;
(b) the capital expenditures were incurred in the 18-month period preceding the date on which the landlord makes the application;
(c) the capital expenditures are not expected to be incurred again for at least 5 years.

Per Regulation 23.1(5), tenants may defeat an application for an additional rent increase for expenditure if the tenant can prove, on a balance of probabilities, that the expenditures were incurred:

(a) for repairs or replacement required because of inadequate repair or maintenance on the part of the landlord, or
(b) for which the landlord has been paid, or is entitled to be paid, from another source.

If a landlord discharges their evidentiary burden and the tenant fails to establish that an additional rent increase should not be imposed for the reasons set out in Regulation 23.1(5), a landlord may impose an additional rent increase pursuant to section 23.2 and 23.3 of the Regulation.

Regulation 21.1 defines major component and major system:

"major component", in relation to a residential property, means
(a)a component of the residential property that is integral to the residential property, or
(b)a significant component of a major system;
"major system", in relation to a residential property, means an electrical system, mechanical system, structural system or similar system that is integral
(a)to the residential property, or
(b)to providing services to the tenants and occupants of the residential property;

I will address each of the legal requirements.

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the Landlord's claim and my findings are set out below.

Number of specified dwelling units and benefited units

The Landlord stated the expenditures benefit all 62 rental units located in the building.

Based on the Landlord's undisputed testimony, I find the rental building has 62 rental units and that they all benefit from the expenditures, in accordance with section 21.1(1) of the Regulation.

Prior application for an additional rent increase and application for all the tenants

The Landlord stated he did not submit a prior application for an additional rent increase and that he named as respondents in this application all the tenants that he intends to impose the additional rent increase.

Based on the Landlord's undisputed and convincing testimony, I find that the Landlord has not submitted a prior application for an additional rent increase in the 18 months preceding the date on which the Landlord submitted this application, per Regulation 23.1(2).

Based on the Landlord's convincing testimony, I find the Landlord submitted this application against all the Tenants on which the Landlord intends to impose the rent increase, per Regulation 23.1(3).

Expenditures incurred in the 18-month prior to the application

The Landlord submitted this application on October 29, 2024.

Regulation 23.1(1) states the Landlord may seek an additional rent increase for expenditures incurred in the 18-month period preceding the date on which the landlord applied.

Thus, the 18-month period is between April 28, 2023 and October 28, 2024.

The Landlord submitted an invoice dated August 01, 2023 and the proof of payment for the amount claimed in relation to the Generator and testified he paid this amount on November 28.

The Landlord submitted 5 invoices with due dates between September 15, 2022 and March 2, 2023 for the Heating system and said the last invoice in the amount of $19,640.46 was paid on May 9, 2023.

The Landlord submitted 3 invoices with due dates between September 24, 2023 and November 19 in relation to the Automation system and affirmed the last payment was on February 12, 2024.

The Landlord submitted the proofs of payment for all the invoices mentioned in this topic.

Policy Guideline 37C states:

> A capital expenditure can take more than 18 months to complete. As a result, costs associated with the project may be paid outside the 18-month period before the application date. For clarity, the capital expenditure will still be eligible for an additional rent increase in these situations as long as the final payment for the project was incurred in the 18-month period.

Based on the Landlord's convincing and undisputed testimony, the invoices and the cheques, I find the Landlord incurred all the expenditures in the 18-month period, per Regulations 23.1(1) and 23.1(4)(b).

Expenditures not expected to occur again for the next 5 years

The Landlord stated the expenditures are not expected to occur again for at least 5 years, as their life expectancies are more than 5 years.

Policy Guideline 40 provides that the useful life of generators is 25 years, heating systems and hot water systems are at least 20 years. I am considering in this decision Policy Guideline 40 issued in March 2012, as the updated version of that document was issued after the hearing of this application.

Landlord GWI testified the useful life of the Automation system is at least 5 years, but it is expected to last 15 to 20 years and the Landlord does not intend to replace this system after 5 years.

Based on the Landlord's convincing testimony and considering Policy Guideline 40, I find that the life expectancy of all the expenditures is more than 5 years, and they are not expected to be incurred again for at least 5 years. Thus, I find that the capital expenditures incurred are eligible capital expenditures, per Regulation 23.1(4)(c).

Payment from another source

The Landlord said that the amounts paid for the Heating system are higher than the requested amount for the additional rent increase because he received a rebate from Fortis BC and the amount requested in this application is the total amount after the rebate.

The Landlord affirmed that he is not entitled to be paid from another source for the expenditures claimed, considering the amounts claimed in this application already deducted the rebate from Fortis BC.

Tenants SMC, LJE and PDA stated the Landlord purchased the building knowing that the expenditures were needed, and the Landlord must have taken into consideration the amount of the expenditures when he purchased the building.

The Landlord testified the price of purchasing the building cannot be considered payment from another source and that the building's price did not include a discount or price reduction because of the expenditures. The Landlord also said that he has been in contact with several tenants about the evidence for this application and SMC and PDA did not ask him to provide the purchase contract prior to the hearing.

Policy Guideline 37C states:

> To be considered a "payment from another source," a landlord must be reimbursed by a third party for some or all of the cost of the capital expenditure. For grants, rebates, subsidies, insurance plans, and claim settlements, landlords are reimbursed for the cost of capital expenditures by a third party (e.g., insurance provider, government, private individual). However, landlords are not reimbursed by another party under tax credit and deduction schemes. Instead, a landlord is simply paying another party a lesser amount. As such, schemes that landlords can access to reduce their taxable income when they incur capital expenditures do not constitute "payments from another source" because the landlord is not receiving payment by reducing their taxable income.

I find that a discount or price reduction because the Landlord purchased the building knowing the expenditures were needed is not a payment from another source, as stated in Regulation 23.1(5)(b), because the Landlord would simply have paid a lesser amount

to the seller of the building, rather than being reimbursed for the cost of the expenditures.

Based on the Landlord's convincing testimony, I find the Landlord is not entitled to be paid from another source for the expenditures, per Regulation 23.1(5)(b) and policy guideline 37C.

Type and reason for each expenditure

I will individually analyze the expenditures claimed by the Landlord.

Generator

The Landlord affirmed the building was built in 1962 and the Generator provides power to the entire building. The Landlord submitted a report signed by a building science technologist on April 30, 2021 (the Report). It states:

> The Site Building possesses a 10 kW "Onan" natural gas-fired emergency power generator which was noted within the mechanical room. Power to the Site Building is automatically transferred via an automatic transfer switch. It was reported that the generator is original to the Site Building (i.e., 57 years old).
> Inspections and servicing of the emergency generator is reportedly performed by "Frontier Power", an independent contractor. It was reported that the emergency generator supplies power localized emergency lighting and emergency exit signs. No problems were observed or reported relating to the electrical systems of the Site Building.

The Landlord stated that the Generator expenditure was not necessary because of inadequate repair or maintenance and submitted a maintenance report for the prior generator dated April 28, 2022 indicating that on that date the prior generator was "unit running goof, oil level good, battery / charge: good".

The Landlord submitted photos of the old generator and the new one and the warranty letter for the new one dated September 12, 2023. It states the Generator has a 5 year warranty.

The Tenants testified the Landlord did not need to install the new Generator because the old one was in good condition.

RTB Policy Guideline 37C states:

> The Regulation defines a “major system” as an electrical system, mechanical system, structural system, or similar system that is integral to the residential property or to providing services to tenants and occupants. A “major component” is a component of the residential property that is integral to the property or a significant component of a major system.
> Major systems and major components are essential to support or enclose a building, protect its physical integrity, or support a critical function of the residential property.
> **Examples of major systems or major components include, but are not limited to,** the foundation; load-bearing elements (e.g., walls, beams, and columns); the roof; siding; entry doors; windows; primary flooring in common areas; subflooring throughout the building or residential property; pavement in parking facilities; **electrical wiring**; **heating systems**; plumbing and sanitary systems; security systems, including cameras or gates to prevent unauthorized entry; and elevators.
> **A major system or major component may need to be repaired, replaced, or installed so the landlord can meet their obligation to maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law.** Laws include municipal bylaws and provincial and federal laws. For example, a water-based fire protection system may need to be installed to comply with a new bylaw.
> Installations, repairs, or replacements of major systems or major components will qualify for an additional rent increase if the system or component has failed, is malfunctioning, or is inoperative. For example, this would capture repairs to a roof damaged in a storm and is now leaking or replacing an elevator that no longer operates properly.
> **Installations, repairs or replacements of major systems or major components will qualify for an additional rent increase if the system or component is close to the end of or has exceeded its useful life**. A landlord will need to provide sufficient evidence to establish the useful life of the major system or major component that was repaired or replaced. This evidence may be in the form of work orders, invoices, estimates from professional contractors, manuals or other manufacturer materials, or other documentary evidence.
> Repairs should be substantive rather than minor. For example, replacing a picket in a railing is a minor repair, but replacing the whole railing is a major repair. Cosmetic changes are not considered a capital expenditure. However, a cosmetic upgrade will qualify if it was part of an installation, repair, or replacement of a major system or

> component. For example, a landlord may replace carpet at the end of its useful life with porcelain tiles even if it costs more than a new carpet.
> The following is a non-exhaustive list of expenditures that would not be considered an installation, repair, or replacement of a major system or major component that has failed, malfunctioned, is inoperative or is close to the end of its useful life:
> • repairing a leaky faucet or pipe under a sink,
> • routine wall painting, and
> • patching dents or holes in drywall.
>
> (emphasis added)

Based on the Landlord's convincing testimony and the maintenance report dated September 12, 2023, I find the Landlord proved that the Generator replacement was not necessary because of inadequate repair or maintenance on the part of the Landlord, per Regulation 23.1(5)(a).

Based on the Landlord's convincing testimony, the invoice and the Report, I find the prior generator was 59 years old when it was replaced in 2023 and beyond its useful life of 25 years.

Policy Guideline 37C indicates that electrical systems are major systems. I find the Generator is part of the electrical systems, as it provides power during emergencies.

Section 23.1(4)(a)(ii) allows for the replacement of systems that are beyond their useful life, even if the old system was in good condition.

Considering the above, I find that the expenditure of $31,631.25 to install the Generator is in accordance with Regulation 23.1(4)(a)(ii).

Heating

The Landlord said the boilers for the Heating system were from 2002 and 2003 and the Report indicates they needed to be replaced:

> 3.9.2 Heating, Ventilation and Air Conditioning (HVAC)
> Heating throughout the Site Building is provided by perimeter hydronic baseboard heaters which are supplied with hot water from two natural gas-fired heating boilers. **The heating boilers consist of two "Laars" units which were manufactured in**

> **approximately 2002 (i.e., ~ 19 years old)** with an approximate input heating capacity of 1,010,000 British Thermal Units per Hour (BTUH) each. The boilers are located within the ground floor mechanical room. Temperature control for the boiler is controlled by a Tekmar 274 boiler control unit located within the mechanical room combined with thermostats located within each unit.
> 3.9.3 Domestic Hot Water
> Domestic Hot Water (DHW) within the Site Building is provided by a natual gas-fired boiler which is located in the mechanical room. The boiler was noted to be **manufactured by "Laars" in approximately 2003 (i.e., ~ 18 years old)** and was noted to possess an approximate input heating capacity of 715,000 BTUH. The boiler is complete with two indirect fired Domestic Hot Water (DHW) tanks which were noted to be manufactured by "Allied Engineering Company". The date of manufacturer is unknown, however based on observed condition, they appear to be of similar vintage to the DHW boiler (i.e., approximately 18 years old). There is reportedly no shortage of DHW within the Site Building.
>
> (emphasis added)

The Landlord affirmed the new boilers reduced the consumption of natural gas and submitted bills showing a lower gas consumption and photos of the new Heating system.

Policy Guideline 37C indicates that the heating systems are major components. I find the boilers are part of the heating systems, as boilers are necessary to heat the rental building, per Regulation 21.1 and Policy Guideline 37C.

I accept the uncontested testimony that the replaced boilers were at least 20 years old in 2023. Thus, I find the replaced boilers were beyond their useful lives.

Based on the Landlord's convincing testimony, the invoices, photographs and the Report, I find the Landlord proved that he replaced the boilers which provide heat to all

the tenants because the prior boilers were beyond their useful lives and he did not need to replace them because of inadequate maintenance, per Regulation 23.1(5)(a).

The Tenants stated the lower water and gas bills will benefit the Landlord only, as they pay a fixed-rent amount.

The Legislation does not prevent Landlords from seeking an additional rent increase if the new boilers reduce the gas and water bills and the Landlord is the one directly benefiting from the utility bills reduction.

Considering the above, I find that the expenditure of $181,384.60 to replace the boilers is in accordance with Regulation 23.1(4)(a)(ii).

Automation

The Landlord testified the automation system assists the Landlord in monitoring the heating system and automatically makes adjustments to the boilers and helps to reduce the natural gas consumption. There was no automation system prior to the installation of this expenditure.

The Landlord submitted the Automation system guide into evidence. It states:

> Reduce Energy Costs
> One of the primary benefits of automation is the reduction in energy consumption. Operating a large building daily involves a myriad of operating expenses, renters and owners alike benefit from automatic climate control, among other systems.

The Landlord submitted photos of the automation system equipment.

Policy Guideline 37C indicates that the heating systems are major components. I find the Automation system is part of the heating systems, as it monitors and adjusts the boilers, which are part of the Heating system and are necessary to heat the rental building, per Regulation 21.1 and Policy Guideline 37C.

As the Automation is a new system, section 23.1(5)(a) does not apply to this expenditure.

Based on the Landlord's convincing testimony, the invoices, photographs and the system guide, I find the Landlord proved that he installed the Automation system and this will reduce greenhouse gas emissions.

The Tenants said the lower water and gas bills will benefit the Landlord only.

The Legislation does not prevent Landlords from seeking an additional rent increase if the new boilers reduce the gas and water bills and the Landlord is the one directly benefiting from the utility bills reduction.

Considering the above, I find that the expenditure of $20,697.15 to install the Automation system is in accordance with Regulation 23.1(4)(a)(iii)(A).

Tenants' submissions

Tenant ADE affirmed that some tenants have upgraded units and others do not, and that there is a new Heating system repair ongoing.

Landlord GWI stated the ongoing heating upgrade, informed to the Tenants in January 2025, is not related to the Heating system upgrade discussed in this application.

Tenant GVA testified that she struggles to adjust the temperature in her unit.

Tenant GVA is at liberty to submit a request for repairs regarding her unit's temperature.

Outcome

The Landlord has been successful in this application, as the Landlord proved that all the elements required to impose an additional rent increase for expenditure and the Tenants failed to prove the conditions of Regulation 23.1(5).

In summary, the Landlord is entitled to impose an additional rent increase for the following expenditures:

Expenditure	**Amount $**
Generator	31,631.25
Heating	181,384.60
Automation	20,697.15
Total	**233,713.00**

Section 23.2 of the Regulation sets out the formula to be applied when calculating the amount of the additional rent increase as the number of specified dwelling units divided by the amount of the eligible expenditure divided by 120. In this case, I have found that there are 62 specified dwelling units.

The Landlord has established the basis for an additional rent increase for the expenditure of $31.41 per unit ($233,713.00/ 62 units / 120). If this amount represents an increase of more than 3% per year for each unit, the additional rent increase must be imposed in accordance with section 23.3 of the Regulation.

The parties may refer to RTB Policy Guideline 37C, Regulations 23.2 and 23.3, section 42 of the Act (which requires that a landlord provide a tenant three months' notice of a rent increase), and the additional rent increase calculator on the RTB website (http://www.housing.gov.bc.ca/rtb/WebTools/AdditionalRentIncrease/#NoticeGeneratorPhaseOne/step1) for further guidance regarding how this rent increase may be imposed.

Conclusion

The Landlord has been successful. I grant the application for an additional rent increase for expenditures of $31.41 per unit. The Landlord must impose this increase in accordance with the Act and the Regulation.

The Landlord must serve the tenants with a copy of this decision in accordance with section 88 of the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: February 21, 2025

Residential Tenancy Branch